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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 534.

W. C. O'NEAL, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

FILED DECEMBER 26, 1902.

(18,762.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 27, 1902.

1 In the District Court of the United States for the Northern District of Florida.

In the Matter of the Rule upon W. C. O'NEAL to Show Cause Why He Should Not be Punished for Contempt upon the Statements Set Forth in the Rule and the Affidavit of A. Greenhut Thereto Attached.

Be it remembered that on the tenth day of November, in the year of our Lord one thousand nine hundred and two, the following affidavit was duly presented in open court to the judge of said court, and thereupon filed by the clerk, and is in the words and figures following, to wit:

In the United States District Court, Northern District of Florida, at Pensacola.

In the Matter of SCARRITT MORENO, Bankrupt.

UNITED STATES OF AMERICA, }
Northern District of Florida, City of Pensacola, } ss:

Adolph Greenhut, of the city of Pensacola, in the district aforesaid, being duly sworn according to law, on his oath doth depose and say:

That heretofore, to wit: on the 29th day of August, 1902, one Scarritt Moreno filed in the honorable, the district court of the United States in and for the northern district of Florida, at Pensacola, his petition to be adjudged a bankrupt and to obtain the benefits of the acts of Congress of the United States relating to bankruptcy. That thereafter such proceedings were had upon said petition in said United States district court that, on September 15th, 1902, affiant was duly appointed trustee of the estate of the above-named Scarritt Moreno, bankrupt, which said appointment of deponent as trustee was then and there approved by the said court. That thereafter, to wit: on the day and year last aforesaid, affiant accepted said appointment and filed his bond as such trustee, which said bond was duly approved by E. K. Nichols, Esq., referee in bankruptcy, and at the same time deponent took the oath of office as required

2 by law, and thereupon he became charged with the duties and clothed with the authority appertaining to a trustee in bankruptcy under the laws of the United States, and from thence hitherto has occupied and is now occupying said trusteeship, amenable to and subject to the orders of the said court, the honorable district court of the United States in and for the northern district of Florida.

That affiant was by his counsel, advised that it was his duty as trustee of the estate of said Scarritt Moreno as aforesaid to institute a certain suit or action in equity for the purpose of having certain

property purchased by the said Scarritt Moreno, bankrupt, the title to which was taken by the said Scarritt Moreno in the name of his wife, brought into the said United States district court as a part of the estate of said bankrupt, to be there administered as required by law, and for the further purpose of having certain mortgages on said property decreed and declared to be null, void and of no effect. That thereupon in the afternoon of Saturday, the 18th day of October, 1902 through his counsel, he, as trustee as aforesaid, and in the performance of his duties as aforesaid as an officer of the United States district court, caused to be filed in the circuit court of Escambia county, State of Florida, his certain bill of complaint therein and thereby, among other things, seeking the relief above referred to. That by the advice of his counsel, Scarritt Moreno, Susie R. Moreno, his wife, the American National Bank of Pensacola, the Citizens' National Bank of Pensacola, and others, were made parties defendant in and to said bill of complaint, and that upon the filing of the said bill of complaint suit was commenced against the defendants named in said bill of complaint. That all of the proceedings above referred to were taken and had by affiant as an officer of the district court of the United States, in and for the northern district of Florida, and in the due, proper and faithful performance of his duties as such officer, and were necessarily had and taken under the law and his oath of office.

That on Monday, the 20th day of October, A. D. 1902, between the hours of nine and ten o'clock a. m., affiant was standing in the door of the office of the store owned and conducted by him,
3 situated at No. — East Government street, in the city of Pensacola, aforesaid, which said office was occupied by deponent, among other things, for the purpose of performing the duties devolving upon him as trustee as aforesaid, and in which said office this deponent kept and had the custody of the papers, books, etc., relating to and connected with the estate of the said Scarritt Moreno, bankrupt, in deponent's hands as trustee as aforesaid. That at the said time deponent was engaged in conversation with one Alex. Liscklioff when one W. C. O'Neal, who was at the said time president of The American National Bank of Pensacola, one of the defendants in the action or suit heretofore referred to, approached to where affiant was standing and conversing as aforesaid and stated to affiant that as soon as he, affiant, was at liberty, he, said O'Neal, desired to speak to him; thereupon affiant stated in effect that said O'Neal could speak to him then, and affiant entered his said office and stood alongside of a standing desk about five feet from the door of said office. Said O'Neal followed affiant into said office and stood opposite to affiant, and distant only a few feet. That thereupon said O'Neal in effect asked this affiant why he, affiant, had brought the name of his, the American national bank, into the Moreno suit (meaning thereby the suit above referred to brought by affiant as trustee against Scarritt Moreno and others); that affiant replied that he, O'Neal could see his, affiant's, attorneys in relation thereto; that said O'Neal made some remark to the effect that he would not do so and stated to affiant that he, affiant, was no gentleman; that affiant

thereupon said that he, affiant, was as much of a gentleman as he, the said O'Neal, was; that thereupon said O'Neal said we'll settle the matter, and turned about as if he intended to leave the premises of deponent, walking towards the door of said office and out upon the sidewalk. That affiant had no thought, idea or suspicion that the said O'Neal intended any personal violence toward him and quietly started forward from where he was so standing as aforesaid towards the door of said office leading into the street. That affiant barely reached the doorway of said office when said O'Neal,

4 without any provocation, without any notice to deponent of his murderous intention, turned and wheeled suddenly about with his knife in his hand, and with intent to kill and murder deponent, struck at his, deponent's, throat with said knife, and cut deponent at a point behind the left ear, cutting through lower portions of said ear, then across the left cheek, ending at left corner of mouth, and immediately thereafter said O'Neal cut and stabbed deponent four further times: (1) on left side over lower ribs; (2) upon left hip; (3) on left elbow, and (4) on right hand. That the cuts, wounds and stabs so inflicted by said O'Neal upon deponent were of a serious and dangerous character, and from said time to the present, deponent has been unable to attend to and perform his duties as trustee as aforesaid, and has been confined to his home, except for a few hours on two or three occasions on two or three different days, and has ever since been and is now under the care and treatment of a physician, who is attending to his wounds.

That said assault and attempt to murder was committed by said O'Neal as aforesaid solely because and for the reason that affiant, as an officer of the United States district court, in and for the northern district of Florida, had instituted the suit above set forth against the said American national bank and others, and to interfere with and prevent deponent from executing and performing his duties as such officer of said court, and that the said O'Neal did, by the said murderous assault, interfere with the management of the said trust by deponent as an officer of the said court, and did for a long period of time, to wit: from the said 20th day of October, 1902, up to the present time, by reason of the injuries inflicted by him upon deponent as aforesaid, prevent and deter deponent from performing the duties incumbent upon him, deponent, as such officer, and did thereby interfere with the management by deponent as such officer of the estate of said Scarritt Moreno, bankrupt.

A. GREENHUT.

Sworn to and subscribed before me this 7th day of November, A. D. 1902.

E. K. NICHOLS,
Referee in Bankruptcy.

5 Indorsed: U. S. dist. court, nor. dist. Fla. *In re* Scarritt Moreno, bankrupt. Affidavit and order on W. C. O'Neal. Filed November 10th, 1902. F. W. Marsh, clerk, by H. P. Holmes, D. C.

And thereupon and at the same time, the court aforesaid made and caused to be entered of record an order on the said W. C. O'Neal, which is in the words and figures following, to wit:

United States District Court, Northern District of Florida, at Pensacola.

In the Matter of SCARRITT MORENO, Bankruptcy.

Upon reading and filing the affidavit of Adolph Greenhut, trustee—

It is ordered that W. C. O'Neal show cause before this court on the seventeenth day of November, A. D. 1902, at ten o'clock a. m. why he, the said W. C. O'Neal, should not be adjudged guilty of contempt of this court on account of the matters and things set forth and alleged in said affidavit, and—

It is further ordered, that a copy of this order, together with a copy of the said affidavit, be served upon the said W. C. O'Neal forty-eight hours (48) before the time at which this order is made returnable. And I hereby appoint B. C. Tunison Esq., special counsel to represent the court in the prosecution hereof.

Done and ordered this tenth day of November, A. D. 1902.

CHAS. SWAYNE, *Judge.*

Indorsed: Served November 10th, 1902. R. P. Wharton. Filed November 10th, 1902. F. W. Marsh, clerk, by H. P. Holmes, D. C.

And afterwards, to wit: on the seventeenth day of November, in the year of our Lord, one thousand, nine hundred and two, came the respondent aforesaid, W. C. O'Neal, by his attorneys, Messrs. Blount & Blount, and filed in the office of said clerk his demurrer to the rule aforesaid, which is in the words and figures following, to wit:

In the United States District Court, Northern District of Florida.

In the Matter of the Rule upon W. C. O'NEAL to Show Cause Why He Should Not be Punished for Contempt.

6 The said W. C. O'Neal, respondent to said rule, demurs to the said rule and the affidavit thereto attached upon the following grounds, to wit:

1. That the affidavit of A. Greenhut attached to the rule to show cause does not show that the respondent has committed any offence of which this court has jurisdiction in this proceeding.

2. That said affidavit does not show that the respondent has done any act punishable by this court as a contempt thereof.

3. That said affidavit does not show the commission by the respondent of any act of contempt against this court.

BLOUNT & BLOUNT,
Att'ys for Respondent.

I, Wm. A. Blount, of counsel for respondent, certify that in my opinion the foregoing demurrer is well founded in point of law and make oath that it is not interposed for delay.

W. A. BLOUNT.

Sworn to and subscribed before me this 15th day of November, 1902.

[SEAL.] A. C. BINKLEY,
Notary Public.

Indorsed: *In re* rule to W. C. O'Neal to show cause, etc. Demurrer to rule. Filed at 10 o'clock a. m. November 17th, 1902. F. W. Marsh, clerk. Blount & Blount, att'ys.

And afterwards, to wit, on the twenty-first day of November, in the year of our Lord one thousand nine hundred and two, the court aforesaid made and caused to be entered of record an order in the said cause, which is in the words and figures following, to wit:

U. S. District Court, Northern District of Florida.

In the Matter of SCARRITT MORENO, Bankrupt.

On rule, etc., on W. C. O'Neal.

This cause coming on to be heard on demurrer to rule filed by respondent, and the same having been argued by counsel, it is ordered that the said demurrer be, and the same is hereby overruled and said respondent is granted leave to file answer, which answer is to be filed on or before Nov. 22, 1902. To which ruling
7 respondent duly excepted.

Done and ordered this 21st day of November, 1902.

CHAS. SWAYNE, *Judge.*

Indorsed: *In re* W. C. O'Neal, contempt. Filed at 11 o'clock a. m., November 21st, 1902. F. W. Marsh, clerk.

And afterwards, to wit: on the twenty-second day of November, in the year of our Lord, one thousand, nine hundred and two, came the respondent herein by his attorneys aforesaid, and filed in the office of the clerk of said court his answer to the said rule, which is in the words and figures following, to wit:

In the United States District Court, Northern District of Florida, at Pensacola.

In re Rule upon W. C. O'NEAL to Show Cause Why He Should Not be Punished for Contempt upon the Statement Set Forth in the Rule and the Affidavit of A. Greenhut Thereto Attached.

Respondent for answer to the rule and to the said affidavit, says:

1. That he knows in part and presumes in part that the allegations of the first paragraph of said affidavit are true:

2. That he knows in part and presumes in part that the allegations of the second paragraph of said affidavit are true:

3. That the statements in the third paragraph of said affidavit are in part true and in part untrue, and that the following statement of the facts leading up to, accompanying and surrounding the affray between himself and the said Greenhut on October 20, 1902, are true:

That the said Greenhut had been from the organization of the American National Bank of Pensacola in October, 1900, a stockholder and director thereof; that while he was such stockholder and director, the said bank received from the said Scarritt Moreno a certain mortgage for the sum of $13,000, to secure certain indebtedness due or to become due by the said Moreno to the said bank; that the said transaction was an honest and *bona fide* transaction, and that
8 the said Scarritt Moreno was and became indebted to the said bank in a large sum of money secured by the said mortgage: that the said Greenhut was cognizant of the whole of said transaction and knew of its *bona fides* and honesty, as he did of the subsequent *bona fide* transfer thereof to Alex. McGowan, S. J. Foshee and H. L. Covington for a large consideration paid by them to the said bank, and that the bill filed by the said Greenhut as trustee as aforesaid, was filed to declare the said mortgage and transfer null and void, although the said Greenhut knew them to have been entirely honest, straight and valid transactions:

That prior to the said 20th of October, said Greenhut became endorser upon a certain negotiable paper of the said Scarritt Moreno to the said bank to an amount of about fifteen hundred dollars: that the said Greenhut refused to make good his said endorsement, or to pay to the said bank the money due upon said paper at its maturity or thereafter, and before the said 20th day of October the said bank had been compelled to sue him in the circuit court of Escambia county, Florida, upon said paper, and that in the said suit the said Greenhut interposed a defence which this respondent believed and believes to be untrue, and known to the said Greenhut to be untrue.

That on the morning of the 20th of October, 1902, respondent was proceeding from his residence to his office in the said bank, in the direct and usual path pursued by him, and he saw the said Greenhut standing at the door of his said store office upon the said path of respondent, and it suddenly occurred to respondent to reproach the said Greenhat with having brought the said suit mentioned in his affidavit against the said bank when he, the said Greenhut, knew as aforesaid, that there was no foundation therefor; and thereupon the respondent stated to the said Greenhut that he wished to speak to him as soon as he was at liberty, he then being engaged in conversation with one Alex. Lischkoff. The said Greenhut answered that respondent could speak to him then, and both he and respondent stepped to the rear of the said Greenhut's office, when the respondent reproached the said Greenhut with his attitude towards the bank of which he had been a stockholder and director, both in his refusal to pay the negotiable paper hereinbefore mentioned, and

in the bringing of an unfounded suit against it, the con-
9 versation however, concerning chiefly the bringing of the said suit against the said bank. Hot words passed between the said respondent and said Greenhut, during which the said Greenhut said that he would "do respondent up," to which said respondent answered that he did not come to have a disturbance and would not fight in his office except in self-defense, but that if he had to fight he would do so if the said Greenhut would come out upon the street.

When the respondent turned to leave the office and when he had nearly reached the door, he turned and said to the said Greenhut, "Well, you know you lied about the Moreno acceptance, for you said that you would pay it," the Moreno acceptance being the negotiable paper hereinbefore mentioned. As respondent turned, saying this, he noticed that the said Greenhut was following him, and as he said it, the said Greenhut (who was short, stout, heavily built and apparently much more muscular than respondent) struck the respondent (who is thin and feeble) and forced his against the railing in the said office. That respondent shoved the said Greenhut a little away from him, but he, the said Greenhut, instantly recovered and rushed at respondent with his arm uplifted to strike, when respondent drew from his pocket a small pocket knife, and opened it in order to protect himself, and upon said Greenhut rushing again upon him, cut him therewith, while the said Greenhut was still following and endeavoring to strike him.

That it is not true that the respondent at any time said to the said Greenhut that he, respondent, would settle the matter, but the facts are as hereinbefore stated: That respondent does not know how many or where located were all the wounds inflicted with the said knife, and hence he is unable to admit or deny the allegations of the said affidavit relating thereto. That it is not true that the use of the said knife was with the intent to kill and murder the said Greenhut, or to do him any bodily harm, but respondent avers that it was entirely from the instinctive desire of respondent to defend himself from the attack of a larger and more powerful man.

4. That it is not true that the assault charged in the said affidavit was committed by respondent solely because and for the reason that the said Greenhut had instituted the suit aforesaid against the said
American national bank, or to interfere with and prevent
10 him, the said Greenhut, from exercising and performing his duties as an officer of this court: That in truth the respondent never contemplated at any time any interference with the said Greenhut as trustee as aforesaid, or contemplated any affray with the said Greenhut, or any personal conflict with him until he saw the threatening attitude of the said Greenhut towards him, the respondent, as hereinbefore set forth, and that so far as respondent can determine from the actions of the said Greenhut, who was the aggressor as aforesaid, the cause of the said affray was the remark of respondent to the said Greenhut concerning the said Greenhut's action in repudiating his obligation to pay the said acceptance.

And respondent disclaims the existance on his part at any time of

any intent to interfere with, prevent, impede or delay the said Greenhut in the prosecution of the said suit against the said bank, or to interfere with or impede or prevent him in anywise in the execution or performance of any of his duties as such trustee, and specially disclaims any intent to do any act which might savor in the slightest degree of contempt of this honorable court.

W. C. O'NEAL.

W. C. O'Neal being duly sworn says that he has read the foregoing answer and that the statements therein made are true.

W. C. O'NEAL.

Sworn to and subscribed before me this 18th day of November, A. D. 1902.

[SEAL.] JNO. PFEIFFER,
Notary Public.

BLOUNT & BLOUNT,
Attorneys for Respondent.

Indorsed: *In re* rule upon W. C. O'Neal. Answer of respondent. Filed November 22nd, 1902. F. W. Marsh, clerk. Blount & Blount, attorneys for respondent.

And thereafter, to wit, on the ninth day of December, in the year of our Lord, one thousand, nine hundred and two, at a stated term of the said district court, begun and held at the city of Pensacola in said district, on the said day, the said cause came on to be heard by the court on the said rule and answer, whereupon the
11 court, made and caused to be entered the following findings and order, to wit:—

In the Matter of the Rule upon W. C. O'NEAL to Show Cause Why He Should Not be Punished for Contempt of this Court as to the Matters and Things Set Forth in the Affidavit of Adolph Greenhut.

This cause coming on to be heard at this time on the affidavit of Adolph Greenhut, in the matter of the bankruptcy proceedings in the estate of Scarritt Moreno, and upon the rule to show cause why he should not be punished for contempt of this court, issued thereon by this court against W. C. O'Neal, and upon the answer of the said respondent, W. C. O'Neal to the said rule and affidavit, and the court having heard the testimony and the witnesses for the prosecution and for the respondent and after argument of counsel, and consideration by the court, and the court being advised in the premises, the court doth find as follows:—

That the affidavit of Adolph Greenhut, upon which this rule was granted, is true, and that the respondent is guilty of the acts and things set forth therein, in the manner and form therein alleged, and that the same constitute and are a substantial contempt of this court, and it is therefore:

Ordered, adjudged and directed, that the said respondent, W. C. O'Neal, be taken hence to the county jail of Escambia county, at Pensacola in the State of Florida, and there confined for and during the period of sixty (60) days * * * , and that he stand committed until the terms of this sentence be complied with, or until he be discharged by due process of law.

And the said respondent, W. C. O'Neal, at this time having sued out his writ of error to the Supreme Court of the United States and made and entered into a bond and undertaking, conditioned as required by law, and duly approved by this court, it is therefore ordered that the said writ of error be and operate as a supercedeas to the judgment heretofore rendered in this cause.

12 And on the same day, to wit: on the ninth day of December, in the year of our Lord, one thousand, nine hundred and two, came the said respondent, by his attorneys, and filed in the office of the clerk of said court his petition for an appeal, which, together with the order made thereon, is in the words and figures following, to wit:

In the United States District Court, Northern District of Florida, at Pensacola.

W. C. O'NEAL, Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA, Defendant in Error.

Proceeding on the rule upon the said W. C. O'Neal to show cause why he should not be punished for contempt in assaulting A. Greenhut, a trustee in bankruptcy in said court.

The said W. C. O'Neal, defendant, feeling aggrieved at the judgment and sentence of the said court, rendered in above cause on the 9th day of December, A. D. 1902, prays an allowance of a writ of error therefrom to the Supreme Court of the United States for the purpose of a review of the judgment heretofore rendered in said cause in favor of plaintiff, and against the defendant, overruling the demurrer of the defendant, (to the rule and affidavit thereto attached) asserting the want of jurisdiction of this court, to render any judgment of contempt against the defendant, upon the facts and other causes set forth in the said affidavit. This court holding and deciding that it had such jurisdiction, and that a transcript of the record and pleadings of the said cause, duly authenticated, sufficient to present to the said Supreme Court on said action of jurisdiction, shall be sent to the said court.

C. H. LANEY,
BLOUNT & BLOUNT,
Attorneys for W. C. O'Neal.

In the United States District Court, Northern District of Florida, — Pensacola.

W. C. O'NEAL, Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA, Defendant in Error.

The defendant W. C. O'Neal, considering himself aggrieved by the rule of this court in said cause in which final judgment was rendered on the 9th day of December, A. D. 1902, holding upon demurrer to the rule and affidavit attached, that it had jurisdiction upon the facts stated in said affidavit, to try and sentence said defendant for contempt of this court, having on this day filed in this court his assignment of errors, and his petition praying for a writ of error to the judgment and proceedings in said cause, to the Supreme Court of the United States upon the said question of jurisdiction, and that a transcript of the proceedings as therein prayed may be made and sent to the Supreme Court. Now on this 9th day of December, A. D. 1902, it is ordered and considered by the court that the said writ of error is to be allowed and awarded upon the said question of jurisdiction alone, as prayed for. And this court thus certifies to the Supreme Court for its decision, the question of jurisdiction, alone, of this court over this cause, as follows:

Did this court have jurisdiction to try and punish the said defendant for contempt thereof, upon the facts and for the causes stated in the said rule and affidavit?

CHAS. SWAYNE,
Judge District Court of the United States,
Northern District of Florida.

Indorsed: W. C. O'Neal *vs.* The United States of America. Petition and order allowing writ of error. Filed December 9th, 1902. F. W. Marsh, clerk.

And at the same time, and on the same day, the said W. C. O'Neal, plaintiff in error, filed his assignments of error, which are in the words and figures following, to wit:

In the United States District Court, Northern District of Florida.

W. C. O'NEAL, Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA, Defendant in Error.

14 Proceeding on the rule upon the said W. C. O'Neal to show cause why he should not be punished for contempt in assaulting A. Greenhut, a trustee in bankruptcy of the said court.

The plaintiff in error assigns as error in the record and proceedings below in the foregoing cause:

1. The overruling by the said district court, of that portion of the demurrer of the defendant to the rule and affidavit asserting that the

court did not have jurisdiction; asserting that such rule and affidavit did not show that the respondent had committed any offence of which the said court had jurisdiction in the said proceedings; and the holding of the court in overruling such demurrer, that it did have such jurisdiction.

2. The further assertion, by the said district court, of jurisdiction in the cause by the rendition of judgment, adjudging the plaintiff in error guilty of contempt, as alleged in the rule and affidavit, and imposing punishment therefor.

C. H. LANEY,
BLOUNT & BLOUNT,
Attorneys for Plaintiff in Error.

Indorsed: W. C. O'Neal *vs.* The United States of America. Assignment of errors. Filed December 9th, 1902. F. W. Marsh, clerk.

And at the same time and on the same day, came the said plaintiff in error and filed and caused to be approved the following bond and undertaking, which is in the words and figures following, to wit:

Know all men by these presents, that we, W. C. O'Neal, as principal, and H. L. Covington and W. J. Hannah as sureties, are held and firmly bound unto the United States of America, in the full and just sum of one thousand dollars ($1,000.00) to be paid to the said United States of America — which payment, well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed this 9th day of December, A. D. 1902.

Whereas, lately at the November term, A. D. 1902, of the
15 district court of the United States for the northern district of Florida, in a suit pending in the said court between The United States of America, plaintiff, and the said W. C. O'Neal, defendant, the same being a proceeding upon a rule upon the said W. C. O'Neal to show cause why he should not be punished for contempt for an assault upon A. Greenhut, trustee, in Pensacola (of the said district court), and a judgment and sentence was rendered against the said W. C. O'Neal, and he has obtained a writ of error from the United States Supreme Court to reverse the judgment and sentence in the aforesaid suit, a citation directed to the United States of America citing and admonishing the United States of America to be and appear in the United States Supreme Court at the city of Washington, District of Columbia, thirty (30) days after the date of this citation, which citation has been duly served.

Now the condition of the above obligation is such that if the said W. C. O'Neal shall appear in the United States Supreme Court at a term thereof to be held in the city of Washington, District of Columbia, on the sixth day of January, A. D. 1903, and from time to time thereafter during said term, and from term to term and from time to time until finally discharged therefrom, and shall abide and obey all orders made by the United States Supreme Court in said

cause, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence by the said district court made, shall be affirmed by the said United States Court, then the above obligation shall be void, else to remain in full force and virtue.

W. C. O'NEAL. [SEAL.]
H. L. COVINGTON. [SEAL.]
WM. J. HANNAH. [SEAL.]

Taken and approved this 9th day of December, 1902.

CHAS. SWAYNE, *Judge.*

Indorsed: W. C. O'Neal *vs.* The United States of America. Supersedeas bond. Filed December 9th 1902. F. W. Marsh, clerk.

And thereupon, and on the same day, to wit, on the 9th day of December, A. D. 1902, in pursuance of the said appeal, there issued out of said court a citation, which, together with the service made thereon, is in the words and figures following, to wit:—

16 To the United States of America:

You are hereby cited and admonished to be and appear at a term of the United States Supreme Court to be holden at the city of Washington, District of Columbia, on the 6th day of January, A. D. 1903, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the northern district of Florida, at Pensacola, wherein W. C. O'Neal is plaintiff in error, and you are defendant in error, and show cause, if any there be, why the judgment and sentence mentioned in said writ of error should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 9th day of December in the year of our Lord one thousand nine hundred and two. Signed this 9th day of December, A. D. 1902.

[SEAL.] CHAS. SWAYNE, *Judge.*

Indorsed: Service of the foregoing citation acknowledged this 9th day of December, 1902. B. C. Tunison, specially appointed attorney for prosecution. John Eagan. United States attorney for northern district of Florida. W. C. O'Neal *vs.* The United States of America. Citation. Filed December 9th, 1902. F. W. Marsh, clerk.

And at the same time, and on the same day there issued out of the Supreme Court of the United States, bearing the signature and tested by the clerk of the district court of the United States for the northern district of Florida, the following writ of error, the original thereof, being hereto annexed and returned herewith, which, together with the return endorsed thereon is hereto attached, to wit:

17 THE UNITED STATES OF AMERICA:

The President of the United States to the honorable the judge of the district court of the United States for the northern district of Florida, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, between the United States of America and W. C. O'Neal, a manifest error hath happened to the great damage of the said defendant, W. C. O'Neal, as by his complaint appears. We being willing that error, if any hath been, shall be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if the judgment therein be given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the District of Columbia, on the 6th day of January, 1903, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the customs and laws of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this ninth day of December, in the year of our Lord one thousand nine hundred and two.

[Seal U. S. Circuit Court, Northern Dist. of Florida, Fifth Circuit.]

F. W. MARSH,
Clerk of the District Court of the United States for the Northern District of Florida.

The within writ of error served this December 9th, A. D. 1902 by lodging and filing a copy for the defendant in error in the clerk's office of the district court of the United States for the northern district of Florida at Pensacola. Witness my hand and seal of office this December 9th, A. D. 1902.

[Seal U. S. District Court, Northern Dist. of Florida, Fifth Circuit.]

F. W. MARSH,
Clerk U. S. District Court, Northern District of Florida.

18 *Clerk's Certificate.*

UNITED STATES OF AMERICA, }
Northern District of Florida. }

I, F. W. Marsh, clerk of the district court of the United States in and for the northern district of Florida in the fifth judicial circuit, by virtue of the attached and foregoing writ of error and in obedience thereto, do hereby certify that the foregoing pages numbered from

one to seventeen, inclusive, contain a true and complete transcript of the record and proceedings had in the district court of the United States aforesaid, in the matter of the rule upon W. C. O'Neal to show cause why he should not be committed or punished for contempt of said court, and wherein W. C. O'Neal is plaintiff in error and The United States is defendant in error, as the same remains of record and on file in said court.

Seal U. S. District Court, Northern Dist. of Florida, Fifth Circuit.

In testimony whereof, I have caused the seal of said court to be hereunto affixed, at the city of Pensacola, in the district aforesaid, this tenth day of December, in the year of our Lord, one thousand nine hundred and two.

F. W. MARSH, *Clerk.*

Endorsed on cover: File No. 18,762. N. Florida D. C. U. S. Term No. 534. W. C. O'Neal, plaintiff in error, *vs.* The United States. Filed December 26", 1902.

FILE COPY.

In the Supreme Court of the United States,

OCTOBER TERM.

No. 534.

Supreme Court U. S.
FILED
MAR 12 1903
JAMES H. McKENNEY,
Clerk.

W. C. O'NEAL, PLAINTIFF IN ERROR,

vs.

UNITED STATES, DEFENDANT IN ERROR.

On motion of Defendant in Error to advance this cause under the provisions of Supreme Court Rule Number Thirty-Two.

The plaintiff in error consents to the making of this order, but requests,

That an oral argument may be permitted, in addition to the filing of printed briefs; and

That such argument may not be set for a day earlier than April 15, 1903.

The request for the oral argument is because of the novelty and importance of the questions involved, to-wit:

Whether, despite the general rule that contempt proceedings in a lower court are not reviewable by appeal or writ of error in this court, a writ of error will lie under Paragraph Two, Section Five of the Act of March 3, 1891, (26 Statutes at Large, U. S. p. 826,) creating Circuit Court of Appeal, when the only matter sought to be determined is the jurisdiction of the court below;

Whether under the Act of March 2, 1831, (4 U. S. Statutes at Large, p. 487,) the limitation as to punishment of contempts in the presence of the court, "or so near thereto as to obstruct the administration of justice," refers to the locality of the offense, or the character thereof, and

Whether an assault upon an officer of the court not acting under specific order, process, mandate, etc. of the court, is a contempt of court.

I submit that these questions are, so far as I know, undecided in this court, and of sufficient importance to justify an oral argument.

The request that such argument, if granted, shall not take place until April 15, 1903, is made subject to the entire convenience of the court.

W. A. BLOUNT,
Attorney for Plaintiff in Error.

FILE COPY.

Office Supreme Court U. S.
FILED
APR 30 1903
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 534.

W. C. O'NEAL, PLAINTIFF IN ERROR,

vs.

UNITED STATES OF AMERICA,
DEFENDANT IN ERROR.

Writ of Error to the District Court of the United States for the Northern District of Florida.

Brief of WILLIAM A. BLOUNT, Attorney for Plaintiff in Error. On motion to dismiss for want of jurisdiction.

W. A. BLOUNT, PUBLISHER, PENSACOLA, FLA.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 534.

W. C. O'NEAL, PLAINTIFF IN ERROR,

vs.

UNITED STATES OF AMERICA,
DEFENDANT IN ERROR.

Writ of Error to the District Court of the United States for the Northern District of Florida.

Brief of WILLIAM A. BLOUNT, Attorney for Plaintiff in Error. On motion to dismiss for want of jurisdiction.

STATEMENT.

On the 10th day of November, 1902, an affidavit was filed in the court below, charging the plaintiff in error with contempt. A rule issued in accordance with its prayer was served upon the plaintiff in error, and in answer thereto he filed a demurrer hereinafter set forth. The judge overruled the demurrer, and the plaintiff in error, reserving the benefit of it answered. Without formal traverse, trial was had before the court and a judgment rendered finding the defendant guilty of contempt of the court *as charged in the affidavit*, and he was sentenced to imprisonment in the county jail, at Pensacola, Florida, for a term of sixty days. From this judgment he sued out a writ of error to this court under paragraph 2, section 5, act of March 3rd, 1891, establishing circuit courts of appeals, &c.

The demurrer of the plaintiff in error was as follows:

1. That the affidavit of A. Greenhut attached to the rule to show cause does not show that the respondent had com-

mitted any offence of which this court has jurisdiction in this proceeding.

2. That said affidavit does not show that the respondent has done any act punishable by this court as a contempt thereof.

3. That said affidavit does not show the commission by the respondent of any act of contempt against this court.

ARGUMENT.

The motion to dismiss is upon the ground that the "said judgment having been rendered in proceedings in contempt, the said judgment is not reviewable in this honorable court on error."

The brief adds the ground that the jurisdiction of the court below was not in issue.

The questions then are:

1. Is this a proceeding in which this court will review a judgment of a District Court of the United States, punishing as for a contempt?

2. Does a District Court of the United States have jurisdiction to punish as for contempt, an act which is not shown by the proceedings to be one of the acts declared to be contempts by the First Section of the Act of 1831, (Revised Statutes, Section 725)?

I.

We of course admit, that under the uniform decisions of this court a writ of error or appeal under the ordinary appellate jurisdiction of the court, does not lie to review the decision of an inferior court in a contempt case. We contend however, that:

A writ of error lies from the Supreme Court of the United States to a District Court of the United States under paragraph 2, Section 5, Act March 3, 1891, (26 Statutes at Large, page 826,) to review the decision of such lower court that it has jurisdiction of a contempt proceeding brought before it.

The want of jurisdiction in this court to review a class of *cases* arising in the lower court does not prevent the con-

gress from declaring that if a certain class of *questions* arises in a certain class of cases, this court shall have power to review decisions upon that class of questions. and congress has so done in acts too numerous to mention.

That there is no connection between the exercise of its ordinary appellate jurisdiction by this court and its jurisdiction to review special cases under acts of congress so permitting, has been decided under this very paragraph in the cases of:

Nishimura Ekiu vs. U. S. 142 U. S. 651;
In re Lennon, 150 U. S. 393.

And in the decision of an analogous principle in the cases of:

Twitchell vs. Pennsylvania, 17 Wall. 321;
Tinsley vs. Anderson, 171 U. S. 105.

In the first of these cases, the court took jurisdiction of a writ of error to review a *habeas corpus* proceeding although it admitted that it had no right to entertain a writ of error generally to review the decisions of inferior courts in such a matter. The distinction taken was that it had jurisdiction because of the character of the question involved, *i. e.*, "the constitutionality of a law of the United States."

In the second case the court affirmed the doctrine of the first case and applied it to a case in which its appellate jurisdiction in the *habeas corpus* matter was involved upon a certificate of the lower court under the very paragraph involved here. It held, as it had before held, that it had no general appellate jurisdiction over judgments of lower courts in *habeas corpus* proceedings, but that it did have power to review the question of jurisdiction of lower courts when presented in the method provided by the paragraph under consideration. It dismissed the writ of error because the lack of jurisdiction relied upon by appellant was not of the court below in the *habeas corpus* proceeding, but in the proceeding against which relief was sought by *habeas corpus*.

The third case was one arising under the twenty-fifth section of the judiciary act of 1789, (1 Statute at Large, p. 85.)

It was an application for a writ of error to a state court in a criminal case. In criminal cases, confessedly, this court had no general appellate jurisdiction over state courts. It however declared its power to grant the writ in a criminal

case, because there was involved in it one of the special questions embraced within the terms of the twenty-fifth section referred to.

The fourth case embraced both a writ of error and an appeal to review decisions of the Civil Court of Appeals of Texas and of the United States Circuit Court for the Eastern District of Texas, both refusing to interfere with a sentence for contempt imposed by an inferior court of the State of Texas. This court held, that while it would not upon an ordinary writ of error for appeal, review such judgments, yet it would do so when, as in that case, the question to be decided was the existence of a "title, right, privilege, or immunity specially set up and claimed under the constitution or a treaty or statute of the United States" as permitted by the twenty-fifth section mentioned.

The same thing is decided in the following cases in which the court under this paragraph 2, of Section 5, Act March 3, 1891, took jurisdiction on a writ of error of the question of the jurisdiction of the court below, although the question arose in cases over which the court had no ordinary appellate jurisdiction.

Thus, though this court has no jurisdiction, to review a judgment in an ordinary suit at law or equity, yet when the question involved is whether the necessary jurisdictional amount was shown in the court below, this court takes jurisdiction of writs of error raising only that question.

B. & L. Association vs. Price, 169 U. S. 45;
Vance vs. W. A. Vandercook Co. 170 U. S. 468, 472, 481.

And so where the jurisdiction of the court below was in issue upon the question as to whether the necessary averment as to citizenship had been made to give the court jurisdiction.

Powers vs. Chesapeake, etc. 169 U. S. 92;
Blackburn vs. Portland, 175 U. S. 574.

These cases are all alike in holding that though there may be no general appellate jurisdiction in this court over a certain class of cases, yet that the court may have jurisdiction of a certain class of questions involved in these cases, or of the cases themselves, if the certain class of questions be involved therein.

Thus, while this court has no general power to review judgments in criminal cases:

Ex parte Kearney, 7 Wheat, 38–42;
Tinsley vs. Anderson, 171 U. S. 105.

Or judgments in cases of contempt.

Ex parte Kearney, 7 Wheat, 38–42.
New Orleans vs. N. Y. Mail Steamship Co. 20 Wall. 387;
Hayes vs. Fisher, 102 U. S. 121;
In re Chetwood, 165 U. S. 443–462.

Or judgments upon *habeas corpus* proceedings.

Nishimura Ekiu vs. U. S. 142 U. S. 658–9;
In re Lennon, 150 U. S. 393, 399.

Yet, if the jurisdiction of the court below be in issue, this court has the power to review upon such question, alone, the judgment of the lower court, even though it be in a criminal, *habeas corpus*, or contempt case.

So in cases of review by this court of the decisions of state courts under section 25, of the judiciary act of 1789, no matter what may be the character of the case, or whether or not it be ordinarily appellable to this court, if the question involved be one of those specified in that act, then this court has jurisdiction.

We find nothing opposed to this in any of the decided cases of this court. Those which we have cited above and others confirming the principles contained in them, use general language asserting that this court cannot review by an appeal or writ of error a judgment of conviction in a contempt proceeding; yet in no one of them was there raised the question here presented, and in the only ones which construe the general power and the special statutory power (under section 5, Act of March 3, 1891, or section 25, judiciary act of 1789) it is held that the questions specified in such sections can be reviewed, although the cases in which they arise could not be reviewed if such questions were not involved in them.

But if these cases are not decisive, reasoning founded upon decided cases shows our contention to be correct. The reasoning in this:

Paragraph two of section five provides for "any case."
A contempt proceeding is a case, and
The court cannot ignore the plain language of the statute.

The language of this section, so far as it relates to this matter, is:

"Section 5. That appeals or writs of error may be taken from the district court, or from the existing circuit courts direct to the supreme court in the following cases:

"In any case in which the jurisdiction of the court is in issue, in which cases the question of jurisdiction alone shall be certified to the supreme court from the court below for decision."

It remains then only to determine whether a contempt proceeding is a case. That it is, is shown by decisions.

a. That a contempt proceeding constitutes a case.

b. That analogous proceedings constitute cases.

c. By judicial definitions of the word, case.

a. It has been specifically decided that a contempt proceeding is a cause.

In Wisconsin, under a statute permitting the removal of a "cause or matter" from one court to another, a contempt proceeding was held removable.

Laurent vs. Ward, 36 Wis. 558–562.

At circuit it is held that a proceeding to punish for contempt is a "cause" within the meaning of the fee bill, for which a docket fee can be taxed.

Erwin vs. U. S., 37 Fed. Rep., 479.

This ruling was followed in

Goodrich vs. U. S., 42 Fed. Rep., 392-395,

And in

Taylor vs. U. S., 45 Fed. Rep , 531-539.

And it has been held that a judgment against a collector of internal revenue for contempt, is a "civil suit" removable under Section 643, Revised Statutes.

McCullough vs. Large, 20 Fed. Rep., 309-310.

b. Proceedings, analogous in that they are not ordinary suits nor cases at law or equity, are held to be cases.

The following proceedings are so held: A *habeas corpus* proceeding, within the meaning of the law (sec. 25, judiciary act,) providing for a review by this court upon certificate of division of opinion between the judges of the circuit courts.

Ex parte Milligan, 4 Wall, 2.

A proceeding by the interstate commerce commission to compel a witness to testify before that body.

Interstate Commerce Commission vs. Brinson, 154 U. S., 447, 475, 477.

A proceeding to test the sufficiency of an official bond.

Oliver vs. Martin, 36 Ark., 139.

A mandamus proceeding.

U. S. vs. Kendall, 12 Pet., 524.

A proceeding by a creditor to have a debtor adjudged a bankrupt.

In re, Oregon Bulletin, &c., 3 Sawy., 529; 18 Fed. Cases, 780.

A proceeding to bring a Chinese laborer before a United States judge to determine his right to remain in this country.

Fong Yue Ting vs. U. S., 149 U. S., 728.

The following have been held to be suits:

A writ of habeas corpus under section 25, judiciary act of 1789.

Holmes vs. Jennison, 14 Pet., 540, 565, 566, 567.

A writ of prohibition.

Weston vs. Charleston, 2 Pet., 449.

A proceeding for condemnation by the United States under a writ of eminent domain.

Kohl vs. U. S., 91 U. S., 367.

c. These decided cases are in line with judicial definitions of a case or suit.

Thus, a "case" is "a proceeding in court."

Blyew vs. U. S., 13 Wall, 581.

"The modes of proceeding may be various, but if litigated between parties in a court of justice, the proceeding by which the decision of the court is sought is a suit."

Weston vs. Charleston, 2 Pet., 464.

"Whenever the claim or contention of a party takes such a form that the judicial power is capable of acting upon it, then it has become a case or controversy."

Smith vs. Adams, 130 U. S., 173, 174.

"That power (judicial power) is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form permitted by law. It then becomes a case * * *"

Osborne vs. Bank, 9 Wheat, 738-819.

"The primary meaning of the word case, according to the lexicographers, is "cause." When applied to legal proceedings it imports a state of facts which furnishes occasion for the exercise of the jurisdiction of a court of justice."

Kendolf vs. Thalheimer, 12 N. Y., 596.

Speaking of a proceeding before a United States Judge, under the Chinese exclusion act, this court says:

"When in the form permitted by law, the executive officer, acting in behalf of the United States, brings the Chinese laborer before the judge in order that he may be heard and the facts upon which depends his rights to remain in the country be decided, and the case is duly submitted to the judicial power for hearing, there are all the elements of a civil case,—a complainant, a defendant and a judge, actor, *reus et judice*."

Fong Yue Ting vs. U. S. 149 U. S. 728–729.

The word case is regarded in its "legal technical sense as meaning contested cases before courts of justice."

Home Ins. Co. vs. Northwestern Packet Co. 32 Ia. 236.

* * * * * * * *

In the foregoing citations will be found decisions using the words cause, case, and suit. For all legal purposes, however, each of these are synonymous, and hence in point here. The words "case" and "cause" are constantly used as synonymous in statutes and judicial decisions, each meaning a proceeding in court, a suit "or action."

Blyew vs. U. S. 13 Wall. 581;
Kendall vs. U. S. 12 Pet. 645;
And *Authorities Supra*.

A contempt proceeding then being a case, such a proceeding must be held to be covered by this statute.

"The words of the Act of Congress being as explicit as language can furnish, must comprehend every case not completely excepted from them."

Young vs. Bank of Alexandria, 4 Cranch, 384.

This principle of construction has been applied to a case where, like the instant one, the question was as to the construction of the expressions "all final judgements," "any final judgment," and "the final judgment" * * * * * in any case," used in statutes defining the appellate power of this court, and the court has given the fullest effect to the language, saying in one case "there is nothing in the context to narrow the ordinary import of the language. We cannot admit that construction to be a sound one which seeks by remote inferences, to withdraw a case from the

general provisions of the statute which is clearly within its words and perfectly consistent with its intent."

Carter Heirs vs. Cutting, 8 Cranch, 251.
Young vs. Bank of Alexandria, 4 Cranch, 384;
Ormsby vs. Webb, 134 U. S. 47–61.

The statute creates no new jurisdiction in this court, but merely changes the form of resort here, for questions of jurisdiction in the court below in contempt cases have always been reviewable here by *habeas corpus* and are reviewable by *certiorari*.

In re Chetwood, 165 U. S. 462.

2.

Our second position is that:

A District Court of the United States has no jurisdiction to punish for contempt, an act which is not shown by the proceedings to be one of the acts declared to be contempts by the 1st Section of the Act of March 2nd, 1831.

Since in this case, the charge was based upon a formal affidavit and since the judgment was that the defendant was guilty "as charged in the affidavit" the question is:

Did a demurrer on the ground that the affidavit did not show that the respondent had committed any offence of which the court had jurisdiction in the proceeding (such ground being based on the contention that the facts alleged did not constitnte a contempt under the Act of 1831) put in issue the jurisdiction of the court?

The counsel for defendant in error contends it did not, because as he alleges, the court had jurisdiction of the subject matter and of the person and hence the question whether or not the affidavit showed a case of contempt was for the court below to decide, and a judgment rendered in pursuance of the decision would, even if the decision were wrong, be only erroneous, and not void for want of jurisdiction.

The argument is that the court had a right to decide on its own jurisdiction, and having decided that it had jurisdiction, such decision is conclusive except upon appeal or writ of error. Since however, no appeal or writ of error lies to review error in a case of contempt, and since the

question of jurisdiction is foreclosed, as defendant in error alleges, by the decision of the court itself, then a judgment in contempt cases would not be reviewable upon any ground nor in any proceeding, and the District Courts would have absolute power over persons charged before them with contempt. The court has, as we shall show, decided to the contrary many times, and discharged on *habeas corpus*, persons committed for contempt, because the committing court had no jurisdiction, although such court had decided that it did have such jurisdiction.

It has been decided that a court has no jurisdiction over a contempt case in a proceeding commenced by affidavit unless the affidavit states facts which in law constitute a contempt.

Batchelder vs. Moore, 42 Cal. 415;
Wyatt vs. People, 17 Col. 252;
Ex parte Degener, 30 Tex. Crim. App. 566.
See Brown on Jurisdiction, Sec. 3 and .

The mere fact that a court has jurisdiction over contempts does not give it power to punish any act however innocent, as a contempt, merely because it decides it to be so. It can, when the fact alleged constitutes a contempt in law, determine whether such fact is true, but it cannot by its decision render that a contempt which is not so. In other words, not only must it have before it the person charged, and have jurisdiction of contempts, but it must have authority to pronounce judgment in the particular case.

Ex parte Degener, 30 Tex. Crim. App. 566, and authorities cited;
People vs. Liscomb, 60 N. Y. 559;
U. S. vs. Swan. 150 U. S. 648 and Cit.

Particularly is this true in the United States Courts, where a statute defines what shall be contempts thereof, and restricts their authority to punish to the specific acts thus defined.

Ex parte Robinson, 19 Wall. 505–510.

The statute is imperative in its declaration that the "power" shall not be construed to extend, &c., so that by these express terms the court has no jurisdiction except when the facts embraced in the statute exist.

The fancy that the court below had jurisdiction of the subject matter,—contempts,—and of the person,—the plain-

tiff in error,—and that it could by its decision make that a contempt which by the law was not a contempt, in other words that we cannot inquire into its authority to pronounce the particular judgment, is dispelled by many decisions of this court in which the question arose in various forms.

In prohibition cases, which of course involve only jurisdiction:

District Courts have of course general admiralty jurisdiction, and when they have a *res* before them, they would as defendant in error contends, have jurisdiction to determine anything to be cognizable by them in admiralty, and such determination could be reviewable only on error. But in the case of the Resolute, this court says that the jurisdiction in admiralty cases *in rem*, for breach of maritime contracts "pre-supposes first, that the contract sued upon is a maritime contract, and second, that the property proceeded against is within the lawful authority of the court. These are the only requirements necessary to give jurisdiction."

The court proceeded to determine whether there was or not, a maritime contract, and hence a case for the granting or refusing the writ of prohibition.

The Resolute, 168 U. S. 437.

That is, the court decided that it was not sufficient to sustain the jurisdiction of the court that it was an admiralty court and that the court had possession of the *res*, but it must also appear that the particular contract was a maritime contract, and if not, there would be no jurisdiction.

So in suits for maritime torts, the court though a court of general admiralty powers and having custody of the property attached, has no jurisdiction unless the facts show a maritime tort.

Ex parte Gordon, 104 U. S. 515;

This court issued a writ of prohibition to restrain the District Court from proceeding in admiralty to adjudge damages to buildings on land by fire alleged to have been negligently communicated by a vessel. The court was an admiralty court and had the vessel in possession, but the particular tort relied upon was not a maritime tort, and the court was therefore without jurisdiction in the particular case.

Ex parte Phœnix Insurance Co., 118 U. S. 610.

So this court declared that the District Court, though a prize court and having possession of the prize, did not have jurisdiction to entertain in admiralty a suit for damages against a foreign belligerent ship, etc., and awarded a writ of prohibition.

United States vs. Peters, 3 Dall. 121.

In habeas corpus cases which of course involve only jurisdiction:

This court inquired on *habeas corpus* into the question whether the fact upon which the lower court adjudged the contemnor guilty was a contempt in law so as to give the lower court jurisdiction, and decided that it was not, and discharged the prisoner.

Ex parte Fisk, 113 U. S. 723;

See also, *In re* Ayers, 123 U. S. 485–486

This court recognizes, that even when the court has jurisdiction over the person and the cause, "there may be some other matter which will make the proceeding void," and gives as a reason for a discharge even on *habeas corpus*, "matter for which by law no man ought to be punished," and says "the latter part of this rule when applied to imprisonment under conviction and sentence is confined to cases of clear and manifest *want of criminality in the matter charged*, such as in effect to render the proceedings void."

Ex parte Siebold, 100 U. S. 371.

So upon *habeas corpus* a prisoner has been released because of an amendment of the indictment by the prosecuting officer although the lower court, having cognizance of crimes and jurisdiction of the prisoner, had decided otherwise.

Ex parte Bain, 121, U. S. 1.

In cases arising under this very paragraph and section, where only jurisdiction is involved:

This court has held the allegation of value in cases depending on it to be essential to the jurisdiction of the Circuit Court of the United States and has proceeded to determine whether the allegation was sufficient even though the court below had determined it

The court says "the decision of the only question before us depended upon whether the allegations contained in the bill of complaint showed the matter of dispute to have been of sufficient value to give the Circuit Court jurisdiction."

B. & L. Assn. vs. Price, 169 U. S. 45–46;

Vance vs. Vandercook, 170 U. S. 438, 472, 481.

And the same holding is made as to the jurisdictional character of allegations of citizenship.

Blackburn vs. Portland, 175 U. S. 574;
Stuart vs. Easton, 156 U. S. 46;
Denny vs. Pironi, 141 U. S. 121;
Powers vs. Chesapeake, etc. 169 U. S. 92.

In all these cases the court decided that under the statute which we invoke, the jurisdiction of the court below was in issue, and in the absence of allegations bringing the particular case within the terms of the statute conferring power on the court, there was no jurisdiction. In each case, the court had jurisdiction over common law and equity suits, but not of those particular cases, because the allegations in the proceeding—bill or declaration—did not show the existence of a fact which alone made the particular case justiciable by the court * * * * * * * * * *

We submit that a writ of error lies from this court under paragraph 2, Section 5, Act March 3, 1891, to review the question of jurisdiction of the District Court in cases of contempt and that in this particular case the jurisdiction of the court below was in issue.

Respectfully submitted,
W. A. BLOUNT,
Attorney for Plaintiff in Error.

FILE COPY,

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. [illegible]

W. C. O'NEAL,
Plaintiff in Error,
vs.
THE UNITED STATES,
Defendant in Error.

Motion to Dismiss Writ of Error.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1902.

No. 534.

W. C. O'NEAL,
Plaintiff in Error,
vs.
THE UNITED STATES,
Defendant in Error.

In error to the District Court of the United States for the Northern District of Florida.

MOTION TO DISMISS.

On the 9th day of December, 1902, W. C. O'Neal, the plaintiff in error, was adjudged guilty of contempt by the Honorable District Court of the United States in and for the Northern District of Florida, and was sentenced to be imprisoned in the County Jail of Escambia County, at Pensa-

cola, in the State of Florida, for the term of sixty days. On the day that sentence was pronounced, plaintiff in error sued out a writ of error from the said District Court of the United States to this Honorable Court, and the said Court certified to this Honorable Court the question "Did this court (United States District Court) have jurisdiction to try and punish the said defendant for contempt thereof upon the facts and for the causes stated in the said rule and affidavit," and thereupon plaintiff in error was released from custody upon bond.

Defendant in error moves to dismiss the said writ of error upon the ground that the said judgment, having been rendered in proceedings in contempt, the said judgment is not reviewable in this Honorable Court on error.

Notice of this motion has been served on counsel for the plaintiff in error.

BEN C. TUNISON,
Specially appointed counsel for
Defendant in Error.

FILE COPY.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 684.

M. C. O'NEIL,
Plaintiff in Error,
vs.
THE UNITED STATES,
Defendant in Error.

Brief of Benjamin C. Tipton, specially appointed counsel for defendant in error.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1902.

No. 534.

W. C. O'NEAL,
Plaintiff in Error,
vs.
THE UNITED STATES,
Defendant in Error.

Brief of Benjamin C. Tunison, specially appointed counsel for defendant in error.

ON MOTION TO DISMISS WRIT OF ERROR.

STATEMENT.

On Saturday, the 18th day of October, 1902, ADOLF GREENHUT, Trustee in Bankruptcy of the estate of SCARRITT MORENO, Bankrupt, by appointment of the District Court of the United States for the Northern District of Florida, as

Trustee, instituted a proceeding in chancery in the Circuit Court of Escambia County, Florida, for the purpose of having certain property, alleged to have been purchased by said bankrupt, the title to which was taken in the name of said bankrupt's wife, brought into the said United States District Court as a part of the estate of the said bankrupt for administration as required by law; and for the further purpose of having certain mortgages on certain property decreed and declared null, void and of no effect. By advice of counsel, there was joined as defendant in said proceeding, the American National Bank of Pensacola, which said bank was the assignee of one of the mortgages above referred to. On Monday, October 20, 1902, plaintiff in error, who was President of said American National Bank, solely because and for the reason that said trustee had instituted the said suit against the American National Bank and others, and to interfere with and prevent the said trustee from executing and performing his duties as such trustee of said court, went to the office of said trustee, and without any provocation, with intent to kill and murder said trustee, with a knife, struck at the throat of said trustee and cut him at a point behind the left ear, then across the left cheek, ending at left corner of mouth, and immediately thereafter cut and stabbed said trustee four (4) further times. Thereafter, to-wit, on or about the 7th day of November, 1902, the said trustee caused affidavit setting forth, among other things, the above facts, to be presented to the Honorable District Court of the

United States at Pensacola; thereupon the Honorable Judge of said Court entered a rule directing the plaintiff in error to show cause why he should not be adjudged guilty of contempt of court. Plaintiff in error filed his demurrer to the said affidavit and and rule, which demurrer was overruled. Thereupon plaintiff in error filed his answer, issue was joined, testimony was taken, and the court found the allegations of moving papers proved, adjudicated plaintiff in error in contempt, and sentenced him therefor to sixty (60) days' imprisonment in the Escambia County, Florida, jail.

To review this judgment writ of error was sued out to this Honorable Court, supersedeas granted, and on this writ of error the cause is now here. Motion is now made to dismiss the writ of error.

ARGUMENT.

The only question to be determined on this motion is, Will this court review a judgment of the United States District Court in contempt proceedings on error?

At common law no such review could be had.
Chambers' case, Cro. Car., 168;
Crosby's Case, 3 Wils., 188.

The Federal Courts lay down the rule broadly and stringently, that neither appeal or writ of error lies from adjudications in contempt.
Ex parte Kearney, 7 Wheat., 38 (L. Ed. 5, p. 391);

City of New Orleans vs. N. Y. Mail S. S. Co., 20 Wall., 387 (L. Ed. 22, p. 354);
Ex parte Lange, 18 Wall., 163 (L. Ed. 21, p. 872);
Hayes vs. Fischer, 12 Otto, 121 (L. Ed. 26, p. 95);
Ex parte Rowland, 104 U. S., 604 (L. Ed. 26, p. 861);
Ex parte Fisk, 113 U. S., 713 (L. Ed. 28, p. 1117);
In re Tyler, 149 U. S., 164 (L. Ed. 37, p. 689);
In re Debs, 158 U. S., 573 (L. Ed. 39, p. 1097);
In re Chetwood, 165 U. S., 462 (L. Ed. 41, p. 788);
In re McKenzie, 180 U. S., 536 (L. Ed. 45, p. 657).

In Tinsley vs. Anderson, 171 U. S., 101, etc., (L. Ed. 43, p. 96), this court, in referring to Chetwood's case, supra, wherein the court held that judgments in contempt were not reviewable by writ of error, says, as follows:

"But, that statement was made in regard to such judgments in independent proceedings for contempt in the Circuit Courts of the United States and the reason is as stated in the cases referred to in Hayes vs. Fischer, above cited, that such judgments were considered as judgments in criminal cases, in which this court had no appellate jurisdiction from those courts."

The Act of Congress of March 3, 1891, entitled, "An Act to Establish Circuit Courts of Appeals and to Define and Regulate in Certain Cases the Jurisdiction of the Courts of the United States, and for other purposes," 1 Supp. R. S. U. S. (2 Ed.), 901, does not modify or affect the foregoing decisions of this Court.

Before the passage of the act above referred to, this court had no appellate jurisdiction in criminal cases. By Section 5, however, of the said act, the appellate jurisdiction hereof was extended "to cases of conviction of a capital or otherwise infamous crime." But, while judgments in contempt proceedings are considered as judgments in criminal proceedings, the offense is neither capital nor infamous, and being neither capital nor infamous, this court has no appellate jurisdiction in the premises.

It is further provided by Section 5 of the said act, that writ of error may be taken direct from District Courts to this Court, "in any case in which the jurisdiction of the court is in issue. * * "

By jurisdiction is meant authority to hear and determine the cause, and is distinguishable from the *exercise of jurisdiction*. The authority to decide a case at all, and not the decision rendered therein, is what creates the jurisdiction, and when there is jurisdiction of the person and subject-matter, the decision of all other questions arising in the case is but an exercise of that jurisdiction—matters of regularity only, and not of jurisdiction.

New Lamp Chimney Co. vs. Ansonia Brass, etc., 91 U. S., 660 (L. Ed. 23, p. 336, etc.).

The statute referred to confers upon this court appellate jurisdiction when the jurisdiction, and not when the *exercise of jurisdiction*, is in issue. Where the court below has authority to hear and determine, as in the case at bar, its jurisdiction would not be in issue within the meaning of this statute.

Smith vs. McKay, 161 U. S., 355 (L. Ed. 40, p. 731);
The Resolute, 168 U. S., 437 (L. Ed. 42, p. 536);
B. & L. Ass'n vs. Price, 169 U. S., 45 (L. Ed. 42, p. 655);
Sheppard vs. Adams, 168 U. S., 618 (L. Ed. 42, p. 603);
Powers vs. C. & O. R. R. Co., 169 U. S., 92 (L. Ed. 42, p. 674);
World's Col. Ex. vs. U. S., 56 Fed. Rep., 666.

The jurisdiction of the District Court of the United States in and for the Northern District of Florida, not being in issue, the writ of error should be dismissed.

Respectfully submitted,

B C Tunison

BENJAMIN C. TUNISON,

Specially appointed Counsel for Defendant in Error, on Motion to Dismiss Writ of Error.

Supreme Court of the United States.

No. 534.—October Term, 1902.

W. C. O'Neal, Plaintiff in Error, vs. The United States. } In error to the District Court of the United States for the Northern District of Florida.

[June 1, 1903.]

Mr. Chief Justice Fuller delivered the opinion of the Court:

This was a proceeding in the District Court of the United States for the Southern District of Florida, commenced by the filing of an affidavit of Greenhut, a trustee in bankruptcy, charging W. C. O'Neal with contempt of court in committing an assault upon him.

A rule to show cause was entered and served on O'Neal, to which he filed a demurrer, assigning as grounds that the affidavit did not show that respondent had committed any offense of which the court had jurisdiction, or had done any act punishable by the court as a contempt thereof; or had committed any act of contempt against the court.

The demurrer was overruled and O'Neal answered. Hearing was had on the rule and answer, and evidence introduced on both sides, and the court found respondent guilty of the acts and things set forth in the affidavit, and that they constituted a contempt of court, and thereupon sentenced O'Neal to imprisonment in the county jail at Pensacola, Florida, for the term of sixty days.

The District Court certified the question of its jurisdiction for decision, and a writ of error directly from this court was allowed on the assumption that the case came within the first of the six classes of cases enumerated in section 5 of the judiciary act of March 3, 1891. That class embraces cases "in which the jurisdiction of the court is in issue," that is, where the power of the Circuit and District Courts of the United States to hear and determine is denied. *Smith* v. *McKay*, 161 U. S. 355; *Vance* v. *Vandercook Company*, (No. 2,) 170 U. S. 468, 472; *Mexican Central Railway Company* v. *Eckman*, 187 U. S. 432.

But the question here is asserted in the certificate to be whether the District Court had "jurisdiction to try and punish the said defendant for contempt thereof, upon the facts and for the causes stated in said rule and affidavit."

Jurisdiction over the person and jurisdiction over the subject matter of contempts were not challenged. The charge was the commission of an assault on an officer of the court for the purpose of preventing the dis-

charge of his duties as such officer, and the contention was that on the facts no case of contempt was made out.

In other words, the contention was addressed to the merits of the case and not to the jurisdiction of the court. An erroneous conclusion in that regard can only be reviewed on appeal or error, or in such appropriate way as may be provided. *Louisville Trust Company* v. *Comingor*, 184 U. S. 18, 26; *Ex parte Gordon*, 104 U. S. 515.

And while proceedings in contempt may be said to be *sui generis*, the present judgment is in effect a judgment in a criminal case, over which this court has no jurisdiction on error. Section 5, Act of March 3, 1891, 26 Stat. 826, c. 517, as amended by the Act of January 20, 1897, 29 Stat. 492, c. 68. *Chetwood's Case*, 165 U. S. 443, 462; *Tinsley* v. *Anderson*, 171 U. S. 101, 105; *Cary Manufacturing Company* v. *Acme Flexible Clasp Company*, 187 U. S. 427, 428.

Writ of error dismissed.

True copy.

Test:

Clerk Supreme Court, U. S.